



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0121]

RIN 1625-AA00

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its safety zone regulation for Annual Events in the Captain of the Port Buffalo Zone. This amendment adds eight new permanent safety zones. These amendments and additions are necessary to protect spectators, participants, and vessels from the hazards associated with annual maritime events, including fireworks displays, boat races, and air shows.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0121 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Sean Dolan, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716-843-9322, email D09-SMB-SECBuffalo-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On April 26, 2019, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) titled Safety Zones; Annual Events in the Captain of the Port Buffalo Zone (84 FR 17756). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this amendment to the CFR. During the comment period that ended May 28, 2019, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The purpose of the this rule is to update the safety zones in 33 CFR 165.939 to ensure accuracy of times, dates, and dimensions for various triggering and marine events that are expected to be conducted within the Captain of the Port Buffalo Zone throughout the year. The purpose of the rulemaking is also to ensure vessels and persons are protected from the specific hazards related to the aforementioned events. These specific hazards include obstructions in the waterway that may cause marine casualties; collisions among vessels maneuvering at a high speed within a channel; the explosive dangers involved in pyrotechnics and hazardous cargo; and flaming/falling debris into the water that may cause injuries.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 26, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule adds eight new safety zones to Table 165.939 within § 165.939 for annually recurring events in the Captain of the Port Buffalo Zone. These eight zones were approved and published in the Federal Register as temporary safety zones in 2018 and were added in order to protect the public from the safety hazards previously described. A list of specific changes and additions are available in the attachments within this Docket.

The Captain of the Port Buffalo has determined that the safety zones in this rule are necessary to protect the safety of vessels and people during annual marine or triggering events in the Captain of the Port Buffalo zone. Although this rule will be effective year-round, the safety zones in this rule will be enforced only immediately before, during, and after events that pose a hazard to the public and only upon notice by the Captain of the Port Buffalo.

The Captain of the Port Buffalo will notify the public that the zones in this rule are or will be enforced by all appropriate means to the affected segments of the public, including publication in the Federal Register, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels must comply with the instructions of the Coast Guard

Captain of the Port Buffalo or a designated representative. Entry into, transiting, or anchoring within the safety zones is prohibited unless authorized by the Captain of the Port or a designated representative. The Captain of the Port or a designated representative may be contacted via VHF Channel 16 or at 716-843-9525.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the characteristics of the safety zones, including size, location, duration, and time-of-day. The safety zones created by this rule will be relatively small and are designed to minimize their impact on navigable waters. Furthermore, the safety zones have been designed to allow vessels to transit around them. In addition, the safety zones will have built in times to allow vessels to travel through when situations allow. Thus, restrictions on vessel movement within each particular area are expected to be minimal. Under certain conditions, moreover, vessels

may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 00 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on

actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of recurring annual safety zones. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.939, amend Table 165.939 by adding the entries (a)(7) and (8), (b)(30) through (33), and (c)(5) and (6) to read as follows:

§ 165.939 Safety Zones; Annual Events in the Captain of the Port Buffalo Zone.

* * * * *

Event		Location ¹	Enforcement date and time ²
(a) June Safety Zones			
* * * * *			
(7)	Blazing Paddles	Cleveland, OH All waters of the Cuyahoga River in Cleveland OH, beginning at position 41°29'36"N, 081°42'13"W to the turnaround point at position 41°27'53"N, 081°40'38" W.	On or around the 3 rd weekend of June.
(8)	Boaters Against Cancer Fireworks	Kendall, NY All waters of Lake Ontario contained within a 210 foot radius of the fireworks launch site located at 43°22'02.04" N, 078°01'48.06" W in Kendall, NY.	On or around the last weekend of June.

Event		Location ¹	Enforcement date and time ²
<p style="text-align: center;">(b) July Safety Zones</p> <p style="text-align: center;">* * * * * * *</p>			
(30)	Wine and Walleye Festival Fireworks	Ashtabula, OH All waters within a 280 foot radius of the fireworks launch site located at position 41°54'06"N, 080°47'49"W, Ashtabula, OH	On or around the last weekend of July.
(31)	City of Erie 4 th of July Fireworks	Erie, PA All waters of Lake Erie contained within a 280 foot radius of the fireworks launch site located at 42°08'17.13"N, 080°05'30.17"W in Erie, PA.	On or around the 4th of July.
(32)	Buffalo Italian Fest	Buffalo, NY All waters of Lake Erie contained within a 420 foot radius of 42°52'04.23"N, 078°53'00.67"W in Buffalo, NY.	On or around 2nd or 3rd weekend of July.
(33)	Hamburg Beach Blast	Hamburg, NY All waters of Lake Erie contained within a 280 foot radius of 42°45'59.21"N, 078°52'41.51"W in Hamburg, NY.	On or around the last weekend of July.

¹ All coordinates listed in Table 165.929 reference Datum NAD 1983.

² As noted in paragraph (a)(3) of this section, the enforcement dates and times for each of the listed safety zones are subject to change, and will be published in a Notice of Enforcement prior to the event.

Event		Location ¹	Enforcement date and time ²
<p style="text-align: center;">(c) August Safety Zones</p> <p style="text-align: center;">* * * * * *</p>			
(5)	Ski Show Sylvan Beach	<p>Sylvan Beach, NY</p> <p>All waters where Fish Creek meets Oneida Lake starting at position 43°11'36.6"N, 75°43'53.8"W then South to 43°11'33.7"N, 75°43'51.2"W then East to 43°11'42.4"N, 75°43'38.6"W then North to 43°11'44.5"N, 75°43'39.7"W then returning to the point of origin.</p>	On or around the 2 nd or 3 rd weekend of August.
(6)	Great Lakes Offshore Grand Prix	<p>Dunkirk, NY</p> <p>All waters of Lake Erie starting at position 42°29'37.7"N, 079°21'17.7"W then Northwest to 42°29'45.2"N, 079°21'28.2"W then Northeast to 42°30'15.0"N, 079°21'20.0"W then Northeast to 42°30'39.0"N, 079°19'46.0"W then Southeast to 42°30'09.3"N, 079°19'03.1"W.</p>	On or around the 2 nd or 3 rd weekend of August.

Dated: May 31, 2019.

Joseph S. Dufresne,

Captain, U. S. Coast Guard,

Captain of the Port Buffalo.

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